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Search and Seizure: Police Order to "Stay Put" While Checking Plaintiff's ID is a Seizure Under the Fourth Amendment, Giving Rise to *Monell* Claim

Benson v. City of San Jose, No. 12-15834 (9th Cir. July 11, 2014)

When a police officer asks for a person's identification and directs him to "stay put" while running a background check, the stop is a "seizure" for constitutional purposes and can support a finding of municipal liability under *Monell*, according to the Ninth Circuit.

San Jose Police Officer Brian Pettis approached John Benson and asked for his identification and, according to Benson, told him to "stay put." Benson testified he was standing at a bus stop facing the road when this encounter occurred. The officer testified Benson was facing an elementary school with his arms outstretched over the top of the school's fence watching the children and staring "for a various number of reasons that seemed abnormal." The officer retuned the identification after running a background check.

Benson sued claiming a Fourth Amendment violation and alleged municipal liability under *Monell.* The District Court held Benson was never seized under the Fourth Amendment, rather it was a consensual encounter, and thus never evaluated whether the officer had reasonable suspicion to stop Benson.

HELD: The Ninth Circuit reversed the District Court, finding the officer's command that Benson "stay put" was a seizure within the meaning of the Fourth Amendment and remanded the case to determine municipal liability.

DISCUSSION: The Ninth Circuit conceded that the encounter might have initially been consensual when the officer approached, but held that once the officer told Benson to "stay put" while he ran Benson's identification, a seizure occurred. San Jose countered that Benson was loitering within the meaning of the California Code, but the Circuit Court rejected this defense,

finding that Officer Pettis never stated that was why he approached Benson. The Court viewed this as an *ex post facto* justification by counsel. It noted reasonable suspicion must be established at the time of the stop. Moreover, Officer Pettis was not entitled to qualified immunity since it was clearly established in 2011 that the officer's retention of Benson's identification in combination with his command that Benson not leave constituted a seizure.

As to municipal liability the Court looked to *St. Louis v. Praprotnik*, 485 U.S. 112 (1988), for the proposition that "[i]f the authorized policymakers approve a subordinate's decision and the basis for it, their ratification would be chargeable to the municipality because their decision is final." It found that since the chief of police stated "Pettis had acted reasonably and within Police Department policy and procedure," a reasonable jury could find he approved of Pettis' behavior and thus could find San Jose liable. The majority reversed the District Court and remanded on municipal liability.

DISSENT: The dissent would have affirmed the lower court's holding that this was not a seizure within the meaning of the Fourth Amendment since officers are permitted to request and retain identification for the purpose of running background checks, and that such action is not a seizure so long as the identification is held for no longer than necessary to run the check. Here the dissent believed Officer Pettis obtained the identification and did not extend his investigation or inquiry any longer than permitted. As a result, the dissent would not have deemed this encounter an unlawful seizure, but a consensual encounter regardless of the officer's command that Benson remain while he performed the background check.

http://cdn.ca9.uscourts.gov/datastore/memoranda/2014/07/11/12-15834.pdf (last accessed July 17, 2014).